



NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING TITLE 2. ADMINISTRATION CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R17-13]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 3	New Article
R2-8-301	New Section
R2-8-302	New Section
R2-8-303	New Section
R2-8-304	New Section
R2-8-305	New Section
R2-8-306	New Section
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 38-714(E)(4)
 Implementing statutes: A.R.S. §§ 38-797 et seq.
3. **Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 22 A.A.R. 823, April 15, 2016
4. **The agency's contact person who can answer questions about the rulemaking:**
 Name: Jessica A.R. Thomas, Rule Writer
 Address: Arizona State Retirement System
 3300 N. Central Ave., Suite 1400
 Phoenix, AZ 85012-0250
 Telephone: (602) 240-2039
 E-mail: JessicaT@azasrs.gov
5. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 The ASRS needs to adopt six rules to clarify various aspects of the Long-Term Disability (LTD) program, including the following:
 - Definitions relating to the LTD program;
 - The LTD benefit calculation and applicable reductions;
 - The appeal of a Social Security disability application that has been denied or terminated;
 - Calculating and collecting the estimated Social Security disability income amount; and
 - Revising and refunding the estimated Social Security disability income amount.

In addition to other processes, the ASRS needs to clarify in rule how the ASRS will provide for LTD benefit adjustments in specific situations, such as when survivor benefits are involved. This rulemaking will clarify how the ASRS calculates LTD benefits, including statutory reductions, and Social Security disability repayments to the ASRS. Also, it will explain how a member or survivor may request a revised Social Security disability amount if the member or survivor believes an error has occurred. These new rules will ensure that members and their survivors are aware of how their benefits may be affected, including how the ASRS may reduce or retain their retirement or survivor benefit disbursements based on the estimated Social Security disability income amount that the ASRS paid to the member as an LTD benefit; the rules will reflect that a member or survivor cannot avoid ASRS collection



of the estimated Social Security disability income amount.

- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 8. The preliminary summary of the economic, small business, and consumer impact:**

There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. There may be some economic impact to provide the documentation necessary for the ASRS contracted LTD claims administrator to determine a member's eligibility for LTD benefits. Clarifying what documentation must be submitted will increase understandability of the LTD program, thereby reducing the regulatory burden imposed on the public. This clarification will ensure that ASRS members have notice about how the ASRS LTD program is administered. Thus, the economic impact is minimized.

- 9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Jessica A.R. Thomas, Rule Writer

Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-mail: JessicaT@azasrs.gov

- 10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: March 20, 2017

Time: 10:00 a.m.

Location: Arizona State Retirement System
10th Floor Board Room
3300 N. Central Ave.
Phoenix, AZ 85012-0250

- 11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

None of the rules requires a permit.

- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal law applies to retirement programs, but no federal law specifically applies to this rulemaking.

- c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitive-ness of business in this state to the impact on business in other states:**

No analysis was submitted.

- 12. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

- 13. The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 3. LONG-TERM DISABILITY

Section

<u>R2-8-301.</u>	<u>Definitions</u>
<u>R2-8-302.</u>	<u>Application for Long-Term Disability Benefit</u>
<u>R2-8-303.</u>	<u>Long-Term Disability Calculation</u>
<u>R2-8-304.</u>	<u>Payment of Long-Term Disability Benefit</u>
<u>R2-8-305.</u>	<u>Social Security Disability or Long-Term Disability Appeal</u>
<u>R2-8-306.</u>	<u>Approval of Social Security Disability</u>

**ARTICLE 3. LONG-TERM DISABILITY****R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Estimated Social Security disability income amount" means the same as in R2-8-801(2).
2. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
3. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
4. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.
5. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).

R2-8-302. Application for Long-Term Disability Benefit

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- C. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.

R2-8-303. Long-Term Disability Calculation

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).

R2-8-304. Payment of Long-Term Disability Benefit

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

R2-8-305. Social Security Disability or Long-Term Disability Appeal

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
 1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
 2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

R2-8-306. Approval of Social Security Disability

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.



**NOTICE OF PROPOSED RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

[R17-14]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 8	New Article
R2-8-801	New Section
R2-8-802	New Section
R2-8-803	New Section
R2-8-804	New Section
R2-8-805	New Section
R2-8-806	New Section
R2-8-807	New Section
R2-8-808	New Section
R2-8-809	New Section
R2-8-810	New Section
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 38-714(E)(4)
 Implementing statutes: A.R.S. §§ 38-723, 38-724, 38-765
3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 22 A.A.R. 2082, August 12, 2016
4. **The agency's contact person who can answer questions about the rulemaking:**
 Name: Jessica A.R. Thomas, Rule Writer
 Address: Arizona State Retirement System
 3300 N. Central Ave., Suite 1400
 Phoenix, AZ 85012-0250
 Telephone: (602) 240-2039
 E-mail: JessicaT@azasrs.gov
5. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 The ASRS needs to adopt approximately ten rules to clarify various aspects of how the ASRS recovers overpayments made to or on behalf of members and employers, including the following:
 - Definitions relating to how the ASRS recovers overpayments;
 - Forms relating to the collection of overpayments;
 - Various collection methods for any overpayments by the ASRS;
 - Collection of any overpayments by the Attorney General; and
 - Collection of any overpayments by the Department of Revenue.
 Specifically, the ASRS needs to clarify the various methods it may use to collect an outstanding overpayment amount.
6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
 None
7. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
 Not applicable
8. **The preliminary summary of the economic, small business, and consumer impact:**
 There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. Clarifying how the ASRS may collect an outstanding overpayment amount in various situations, will increase understandability of the statutory requirements in A.R.S. § 38-765, thereby reducing the regulatory burden imposed on the public. This clarification will ensure that ASRS members have notice about how their benefits may be affected by an outstanding overpayment and how the ASRS will collect an overpayment amount. Thus, the economic impact is minimized.
9. **The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**
 Name: Jessica A.R. Thomas, Rule Writer
 Address: Arizona State Retirement System



3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-mail: JessicaT@azasrs.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rule will be held as follows:

Date: March 21, 2017

Time: 9:00 a.m.

Location: Arizona State Retirement System
10th Floor Board Room
3300 N. Central Ave.
Phoenix, AZ 85012-0250

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None of the rules requires a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law applies to retirement programs, but no federal law specifically applies to this rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 8. RECOVERY OF OVERPAYMENTS

Section

R2-8-801. Definitions

R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount

R2-8-803. Reimbursement of Overpayments

R2-8-804. Collection of Overpayments from Forfeiture

R2-8-805. Collection of Overpayments from Retirement Benefit

R2-8-806. Collection of Overpayments from Survivor Benefit

R2-8-807. Collection of Overpayments from LTD Benefit

R2-8-808. Collection of Overpayments by the Arizona Attorney General

R2-8-809. Collection of Overpayments by the Arizona Department of Revenue

R2-8-810. Collection of Overpayments by Garnishment or Levy

ARTICLE 8. RECOVERY OF OVERPAYMENTS

R2-8-801. Definitions

For purposes of this article, the following definitions apply, unless specified otherwise:

1. "DRO" means the same as in R2-8-120.
2. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
3. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
4. "LTD benefit" means the same as in R2-8-301.
5. "Overpayment" means:
 - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
 - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.



R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount

- A.** The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
- Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
 - Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B.** A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C.** Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D.** If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E.** Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
- Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
 - Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F.** If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

R2-8-803. Reimbursement of Overpayments

- A.** Upon the ASRS discovering that it has made an overpayment to a member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B.** A person who reimburses the ASRS for an overpayment shall do so by remitting a check, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C.** If the ASRS is unable to collect the amount of an overpayment by reducing future payments to members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- D.** A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.

R2-8-804. Collection of Overpayments from Forfeiture

- A.** Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B.** The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
- Pursue collection of any remaining overpayment amount pursuant to this Article; and
 - Distribute the remaining refund amount to the member pursuant to R2-8-115.

R2-8-805. Collection of Overpayments from Retirement Benefit

- A.** Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
- If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
 - If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
 - If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (B).
- B.** The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
- The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
 - If the amount of the overpayment cannot be collected pursuant to subsection (B)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- C.** Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-



305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

R2-8-806. Collection of Overpayments from Survivor Benefit

- A.** If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (B).
- B.** The ASRS shall collect the amount of any remaining overpayment by actuarially reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- C.** If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (B), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- D.** Notwithstanding subsection (B), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

R2-8-807. Collection of Overpayments from LTD Benefit

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this section to not less than \$50.00.

R2-8-808. Collection of Overpayments by the Arizona Attorney General

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

R2-8-809. Collection of Overpayments by the Arizona Department of Revenue

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

R2-8-810. Collection of Overpayments by Garnishment or Levy

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this article by garnishing wages and/or placing a levy on the appropriate person's bank account.